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COUNSELLORS-AT-LAW

84 BUSINESS PARK DRIVE SUITE
200
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March 1, 2022

Michael Schiliro, Supervisor
Town of North Castle
15 Bedford Road
Armonk NY 10504

Re: 23 Bedford-Banksville Road

Honorable Supervisor and Members of the Town Board:

I. INTRODUCTION

I write on behalf of our client, 23 Banks Design LLC (Applicant), in connection with its efforts to legalize and improve an existing commercial use at 23 Bedford-Banksville Road. Our client is a tenant on the Property, and needs to process various applications to legalize the current use. They are also in contract to purchase the Property, with a closing date of May 30, 2022. The Applicant, therefore, seeks to legalize the Property so that they secure financing in order to close.

The approach outlined in this letter reflects several months of discussions with the Building Department, the Planning Department, and the Planning Board as to the best path to an enhanced site which conforms with appropriate zoning designations for the site. The proposal outlined herein includes:

- (1) seeking a special use permit for "storage of contractor's equipment" (which for the sake of brevity and clarity, will be referred to herein as a Contractor's" Yard," as it has been characterized by the Town Planning Department). Approval of that special permit would legalize the existing use, with an agreed upon "sunset" of the special use permit after 18 months;

- (2) the adoption of a minor zone text amendment which would clarify the availability of a special use permit for the more desirable long-term use of masonry/stone retail establishment on the property, and
- (3) the granting of a special permit for that newly clarified masonry/stone retail use. The outcome of this approach would be to immediately legalize a longstanding non-conformity, ensure that such non-conformity will not persist beyond 18 months, and establish a legal and desirable use in the future. Taken together, this approach also allows for both the immediate and long-range improvement and enhancement of the site.

II. SUBJECT PROPERTY

The subject Property is located at 23 Bedford-Banksville Road and is 10.8+/- acres in size. The portion of the Property fronting on Bedford-Banksville Road is in the CB-B Zoning District. The position of the Property in the rear of the Property is zoned GB.

The rear of the Property is currently used as a Contractor's Yard, which is a special permitted use authorized as item “*12” on a list of special permitted uses in the GB zone. Special Permitted uses are permitted uses to which conditions may be attached.

While the present use is, therefore, a permitted use, the owner of the Property never obtained a special permit approval for the Contractor's Yard. This appears to be due to the fact that the Property was used as such as far back as the 1960's, prior to the enactment of the applicable zoning regulations. However, the historical record of the enactment of the applicant provisions is uncertain and in order to legalize the long-time use, we make the instant applications.

III. DISCUSSION OF APPLICATIONS

A. Contractor's Yard Special Permit Application: The North Castle Zoning Code establishes that the subject property (Property) is in the CB-B (in the front of the Property) and GB (in the rear of the Property) Zoning Districts. The area of the Property for which the proposed Contractor Yard special permit is sought is in the GB District.

The North Castle Zoning Code does not include specific standards for a Contractor's Yard. However, the Code at S 355-37 sets forth the "general standards" which the Town Board should take into account in determining whether to approve a special permit. Each of those standards is set forth below, followed by a brief discussion of the manner in which the application meets that

criteria. We also note that even to the extent the Board has concerns as to the use, the Applicant proposes a "sunset" of the Contractor's Yard use within 18 months, as will be discussed below.

§355-37. ...[t]he [Town] Board may authorize the issuance of a permit, provided that it finds that all of the following conditions and standards have been met:

A. The location and size of the use, the nature and intensity of the operations involved in it or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to streets giving access to it are such that it will be in harmony with the appropriate and orderly development of the district in which it is located and that it complies with all special requirements for such use established in this chapter.

The Contractor's Yard we seek to legalize through this application has been in use for decades. Its approval will only serve to legalize a long-time use already functioning within the neighborhood without adverse effects in terms of intensity.

When a use is allowed by special permit, the law holds that it is tantamount to a finding by the legislative body of the municipality that the use is consistent with the intent of the zone in which it is allowed. The yard is situated in the rear of the site, entirely within the GB zone (which permits the use by special permit). It may be accessed via a dedicated entrance to the north of the Property, thus minimizing traffic impacts.

Finally, there are no "special requirements" set forth for the Contractor's Yard use.

B. The location, nature and height of buildings, walls, fences and the nature and extent of existing or proposed plantings on the site are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

There are no "buildings, walls [or] fences" associated with the Contractor's Yard use which would hinder or discourage appropriate development or use of adjacent land. The Comprehensive Plan aspires to see the area developed with additional retail uses, and nothing about the proposed use would preclude or discourage that development, especially since we propose to sunset the permit after 18 months. The abutting property to the north maintains a use similar to a Contractor's Yard. An expansive wetland and open space are to the west and south.

C. Operations in connection with any special use will not be more objectionable to nearby properties by reason of noise, fumes, vibration or other characteristics than would be the operations of any permitted uses not requiring a special permit.

As noted above in response to Standard "A," the Contractor's Yard has been in operation for decades: 60 years. Its approval will only serve to legalize a long-time use already functioning within the neighborhood without adverse effects in terms of intensity. Even to the extent any of its operations were deemed "objectionable," they could not be said to be "more objectionable to nearby properties" than other uses permitted as of right in the zone, which includes uses such as wholesale and storage facilities, printing shops, auto body shops and building materials storage and sales.

D. Parking areas will be of adequate size for the particular use, properly located and suitably screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum convenience and safety.

As previously noted in response to "A" and "C," the Contractor's Yard has a dedicated entrance and does not discourage or interfere with the neighboring uses.

E. Where required, the provisions of Chapter 177, Flood Damage Prevention.

The Property is located in a flood plain, and the Applicant will work with the Town Engineering Department to satisfy the standards of Chapter 177. It is noted that the property and its improvements have not suffered flood damage in the past, but is considering design and safety measures for the site, which cannot be implemented until the use is legalized.

F. The Town Board finds that the proposed special permit use will not have a significant adverse effect on the environment.

As indicated on the attached EAF, the use we seek to legalize has been operational for many years, and no increase in intensity is proposed. Indeed, we propose a voluntary sunset of the requested special permit, which will have a positive environmental impact by eliminating the use in a short time.

B. Stone and Masonry Yard Zone Text Amendment: The Applicant also seeks to amend the Zoning Code to allow for the retail storage and sale of masonry and stone, such as might be purchased for home improvement projects, within one of the Property's two zones (GB).

The proposed zone text amendment would simply add the following language to the list of enumerated permitted uses in §355-32, Schedule of Business District Regulations:

**14 Storage and sale of masonry and stone products for retail sale.*

In adopting a zone text amendment, the legislative body should take into account the suitability of the proposed outcome within the zone and its consistency with the Comprehensive Plan. All of the arguments set forth above in the support of the Contractor’s Yard special permit apply to support the suitability of the proposed zone text amendment.

1. The Proposed Outcome Within the Zone: In the GB, numerous commercial and retail uses are permitted principal uses, either as-of-right or by special permit (indicated by an asterisk *). A sample of those which make clearer the consistency of the proposed use are:

- 1. Any uses permitted in an R-1/2A District, as permitted and regulated therein.
- 2. Any uses permitted in an SC District. *(ie., retail)(emphasis added)*
- 5. Wholesale and storage uses, except junkyards, in completely enclosed buildings.
- 6. Automotive body shops in completely enclosed buildings and with a gross floor area not exceeding 2,000 square feet.
- 7. Theaters and clubs, in completely enclosed buildings.
- 8. Building materials storage and sales.
- 9. Public or private garages...
- *10. Public utility exchanges or substations.
- *11. Gasoline filling and service stations, not including the parking or storage of motor vehicles other than those in connection with the permitted use
- *12. Storage of contractor’s equipment.

It certainly cannot be said the uses detailed above are any less intense, or out of character, with the proposed stone and masonry use.

Further, while we do not seek to amend the CB-B zone, since the Property rests in both districts, it is worth mentioning that the proposed use new special permit use is by no means at odds with the proposed use.

In the CB-B, the following uses are permitted principal uses, either as-of-right or by special permit (indicated by an asterisk):

1. Any uses permitted in an SC District.
- *2. Fast-food restaurants.
3. Theaters in completely enclosed buildings.
4. Any nonresidential uses permitted in an R-5 District, as permitted and regulated therein.
- *5. Recreation centers.

As with the GB zone, the uses detailed above are not less intensive or out of character with the proposed stone and masonry use. In fact, we submit that many of the permitted uses in both zones are more intensive than that proposed.

2. The Comprehensive Plan: As to the Comprehensive Plan, Town Planner Adam Kaufman has noted in his January 12, 2022 memo regarding the related site plan application, that:

The Comprehensive Plan states that: demand has been noted for restaurants and grocery stores in the Eastern District – a preference also stated by residents at the Banksville public workshop -- planning efforts should focus on attracting similar food businesses such as neighborhood grocers, restaurants and food delivery services. With limited foot traffic in this area, a small mixed use site accessible by car along Bedford-Banksville Road with a food store, retailer and other convenience shopping may be desired.

The proposed zone text amendment and the use it would permit does not in any way contravene the goals of the Comprehensive Plan. It is consistent with it. Moreover, the site limitations of the site define its appropriate use.

C. Stone and Masonry Yard Special Permit Application: It is proposed that the zone text amendment be applicable to § 355-32, Schedule of Business District Regulations table at the end of the Zoning Chapter. If adopted, an applicant would be required to satisfy the general special permit standards (§ 355-37) set forth and discussed in sub-section A above with respect to the Contractor's Yard special permit.

To that point, all of the criteria would be met as to the establishment of a stone and masonry outlet on this site. The property is sufficiently large, has sufficient access, sufficient distance from neighboring sites and uses, and is, as a retail outlet, more desirable and less impactful than the existing, and, we hope, temporary, Contractor's Yard. We submit it would be less intense than many of the uses already permitted as-of-right and by special permit in the GB zone.

III. CONCLUSION

For the foregoing reasons, we respectfully request that the Town Board grant the proposed special permit for the Contractor's Yard, adopt the zone text amendment proposed, and grant the special permit for the stone and masonry use. These approvals pave the way to a beautified and more functional site, fully compliant with zoning and consistent with the Comprehensive Plan, and ultimately eliminate the Contractor's Yard.

Attached hereto is (i) a completed EAF for the two special permit applications, as well as the zone text amendment action, and (v) a set of site plans submitted by DTS/Provident, Project Engineers, which reflect comments already received from the Town Planning and Engineering consultants in connection with a related site plan application before the Planning Board.

Kindly place on the Town Board's March agenda for our initial discussion. Thank you.

Very truly yours,

Anthony F. Veneziano, Jr.

ANTHONY F. VENEZIANO, JR.

AFV/kj
Encls.

Short Environmental Assessment Form

Part 1 - Project Information

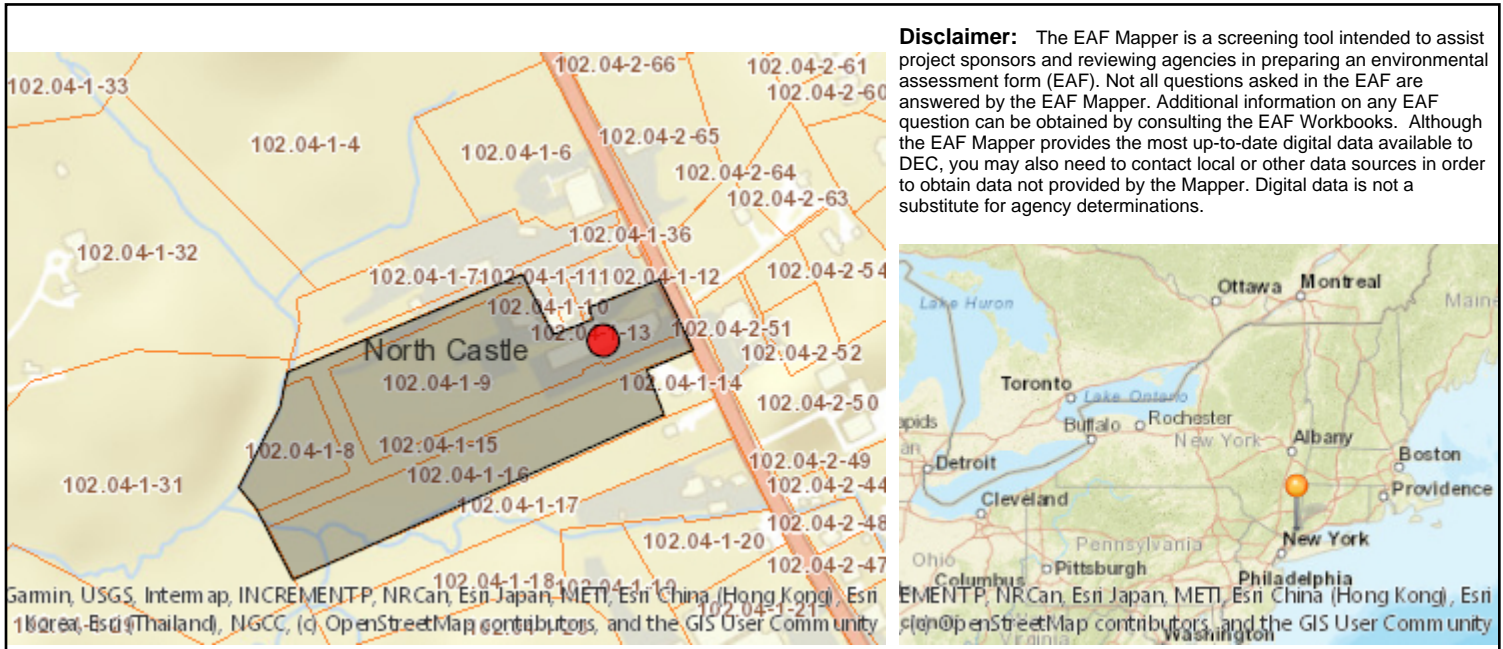
Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information			
Name of Action or Project:			
Project Location (describe, and attach a location map):			
Brief Description of Proposed Action:			
Name of Applicant or Sponsor:		Telephone:	
		E-Mail:	
Address:			
City/PO:		State:	Zip Code:
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>
			YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval:			NO <input type="checkbox"/>
			YES <input type="checkbox"/>
3. a. Total acreage of the site of the proposed action? _____ acres			
b. Total acreage to be physically disturbed? _____ acres			
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres			
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. Urban Rural (non-agriculture) Industrial Commercial Residential (suburban)			
<input type="checkbox"/> Forest Agriculture Aquatic Other(Specify):			
<input type="checkbox"/> Parkland			

5. Is the proposed action, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan?	NO	YES	N/A
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	



Disclaimer: The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.

Part 1 / Question 7 [Critical Environmental Area]	Yes
Part 1 / Question 7 [Critical Environmental Area - Identify]	Name:Mianus River, Reason:Exceptional or unique character, Agency:Westchester County, Date:1-31-90
Part 1 / Question 12a [National or State Register of Historic Places or State Eligible Sites]	No
Part 1 / Question 12b [Archeological Sites]	No
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
Part 1 / Question 15 [Threatened or Endangered Animal]	No
Part 1 / Question 16 [100 Year Flood Plain]	Yes
Part 1 / Question 20 [Remediation Site]	No

